

REMARKS

Claims 1-8, 14, 15, 21, 22, 25, and 28-32 are presently withdrawn from consideration. Claims 9, 11, 12, 14, 18, 19, 23, 24, 26, and 27 remain rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. The Examiner also maintains the rejections of claims 9, 11-13, 16, 18-20, 23, 24, 26 and 27 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ohta et al. (U.S. Patent No.: 5,737,105) in view of Atlas (U.S. Patent No.: 5,930,024).

§ 112, First Paragraph, Rejections - Claims 9, 11, 12, 14, 18, 19, 23, 24, 26, and 27

The Examiner maintains the exact same rejections under 35 U.S.C. § 112, first paragraph, as set forth in the previous Office Action dated April 6, 2004. In the previous Response dated July 6, 2004, Applicants responded to the Examiner's assertions by arguing that the claims are, in fact, enabled, and that one skilled in the art would understand the term of art "wavelength modulation" and how to perform such using a wavelength modulation means. It was also argued that Figures 3-5, which were submitted with the Amendment dated October 6, 2003, should be accepted, as these figures do not contain any new subject matter that was not at least an implicit aspect of the originally filed specification, and Applicants argued that one skilled in the art would recognize this much. *See arguments in Response dated July 6, 2004, on pages 2-3.* Applicants maintain these same arguments set forth previously, as the Examiner does not respond to any of these specific arguments. Also, Applicants reiterate that a copy of § 1.4.2 of the AGRAWAL textbook "Fiber-Optics Communication Systems" was previously submitted and maintain that the submitted section of the AGRAWAL textbook demonstrates that one skilled in the art would be enabled to make and/or use the claimed invention.

RESPONSE UNDER 37 C.F.R. § 1.116 ATTORNEY DOCKET NO. Q53893
U. S. Application No. 09/297,382

§ 103(a) Rejections (Ohta/Atlas) - Claims 9, 11-13, 16, 18-20, 23, 24, 26 and 27

The Examiner rejects the above-identified claims over Ohta and Atlas for the reasons set forth on pages 3-5 of the Office Action. Applicants traverse these rejections at least based on the following reasons.

In the *Response to Arguments* section of the Office Action on page 4, the Examiner argues:

Applicants argue that wavelength modulation, phase modulation and injection current of the laser, as described in the claims for widening the spectrum are known in the art and therefore one skilled in the art would have been enabled to make and/or use the invention as claimed. Thus, it would have been obvious to an artisan to include the well known wavelength modulation means in the system of Ohta for widening the spectrum.

In response, Applicants submit that it was only previously argued that one skilled in the art, at least based on the knowledge in the art and the information provided in the specification, would understand where and how the wavelength modulation, phase modulation, and injection current of the laser, which are described in the claims, are implemented in the claimed invention. This argument was made only to explain to the Examiner that the drawings that were submitted with the Amendment dated October 6, 2003 did not constitute new matter and to explain to the Examiner that the claims were enabled.

Further, Applicants submit that it would not have been obvious to include wavelength modulation means in the specific claimed system of Ohta absent impermissible hindsight reasoning. Applicants submit that the Examiner has used such impermissible hindsight reasoning in arriving at his conclusions, as nowhere does Ohta even mention, as the Examiner

RESPONSE UNDER 37 C.F.R. § 1.116 ATTORNEY DOCKET NO. Q53893
U. S. Application No. 09/297,382

acknowledges, utilizing wavelength modulation. Therefore, at least based on the foregoing, Applicants submit that independent claims 9 and 16 are patentably distinguishable over the applied references, either alone or in combination.

Applicants submit that the dependent claims 11-13, 18-20, 23, 24, 26 and 27 are patentable at least by virtue of their respective dependency from independent claims 9 and 16.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER



Diallo T. Crenshaw
Registration No. 52,778

Date: December 17, 2004